

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF CONNECTICUT**

UNITED STATES OF AMERICA	:	
	:	
	:	
-vs-	:	No. 3:95CR48 (PCD)
	:	
JOHN PAUL	:	

**RULING ON MOTION FOR NEW TRIAL**

Defendant moves for a new trial pursuant to Fed.R.Crim.P. 33, arguing he is entitled to a new trial based on newly discovered evidence. The Court previously denied his motion for relief pursuant to 28 U.S.C. § 2255 as well as his motion for reconsideration of that denial—a motion based on the same grounds as set forth in his instant motion. The Government objects, claiming 1) the information relied upon by defendant is not newly discovered, and 2) defendant’s claim amounts to a thinly disguised claim of ineffective assistance of counsel.

“A motion for a new trial based on new evidence is to be granted ‘only with great caution . . . in the most extraordinary circumstances.’” United States v. Sasso, 59 F.3d 341, 350 (2d Cir. 1995). The evidence 1) must be material to the verdict; 2) must not, with due diligence, have been discoverable before or during trial; and 3) cannot be cumulative. Ineffective assistance of counsel claims do not come within the purview of newly discovered evidence. See United States v. Castillo, 14 F.3d 802, 805 (2d Cir. 1994); United States v. Dukes, 727 F.2d 34, 39 (2d Cir. 1984).

Defendant claims that, pursuant to his Freedom of Information Act request, he received a police report revealing information regarding Tony Cardwell. He claims this information could have been used “as an outright defense as well as impeachment material for the officers involved.”

Mot. for Reconsid., at 2. Defendant maintains that his own attorney intentionally suppressed the police report and withheld the information from defendant.

There is no claim that the Government failed to turn over exculpatory evidence. In fact, the Government offered a portion of the police report into evidence during defendant's criminal trial—and defendant's attorney referred to Cardwell during his closing argument, thereby belying defendant's claim that the evidence is newly discovered. The information that defendant claims to be newly discovered was either disclosed to him by the Government or "with due diligence [could] have been discovered before or during trial." United States v. White, 972 F.2d 16, 20 (2d Cir. 1992). Moreover, defendant's claim centers around his counsel's use, or lack thereof, of this evidence. Such an argument constitutes an ineffective assistance of counsel claim, which the Court previously found to be time-barred.

Defendant's motion for a new trial (doc. 110) is hereby **denied**.

SO ORDERED.

Dated at New Haven, Connecticut, November 6, 2000.

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Peter C. Dorsey  
Senior United States District Judge